

The 3rd September, 1981

No. 9(1)81-8Lab/9713.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workmen and the management of M/s Sidhana and Company, IF/22, NIT, Faridabad :—

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER,
LABOUR COURT, HARYANA, FARIDABAD

Reference No. 275 of 1980
between

Shri Jamil Khan, workman and the Management of M/s Sidhana and Company,
IF/22, N.I.T., Faridabad.

Present—

Shri C.L. Oberia, for the workman.

Shri H.R. Dua, for the respondent-management.

AWARD

This reference No. 275 of 1980 has been referred to this Court by the Hon'ble Governor of Haryana,—*vide* his order No. ID/FD/71-80/30501, dated 20th June, 1980, under section 10(i)(c) of the Industrial Disputes Act, 1947, for adjudication of the dispute existing between Shri Jamil Khan and the management of M/s Sidhana and Company, IF/22, NIT, Faridabad. The term of the reference was :—

Whether the termination of services of Shri Jamil Khan was justified and in order ? If not, to what relief is he entitled ?

The notices were served upon the parties. The parties filed their pleadings on the date of hearing and on the pleadings of the parties, the issue as per reference was drawn.

The case of the petitioner according to his demand notice, dated 3rd April, 1980, claim statement, dated 22nd July, 1980, is that the workman joined the service of the respondent on 1st November, 1979, as Turner and as permanent employee and his service was terminated on 2nd April, 1980, without assigning any reason or notice to the workman. The workman has prayed for his re-instatement with full back wages.

On the other hand the case of the respondent according to the written statement is that the workman did not have any lien over the job as he joined the service as temporary employee. The workman was in the habit of stealing and out of shame did not come to the factory. So the reference may be dismissed. The respondent lead their evidence in the case and produced two oral witnesses Shri Partap Singh, Partner, as MW-1 and Shri O.D. Sharma, Labour Officer, as MW-2 and closed their case. The workman came as his own witness as WW-1 and closed his case. My finding on the issue is as under—

Issue No. 1.—In the present case both the parties gave their oral witness and no document produced. The respondent filed their written statement and two oral witness Shri Partap Singh as MW-1 and Shri O.D. Sharma as MW-2. In the written statement the respondent has admitted that the workman was appointed and he worked with the respondent as turner for a short period. But no appointment letter was produced by the respondent to show whether the workman was appointed as temporary employee or as permanent. The respondent has not produced any copy of order for termination of the workman. They have simply produced the partner of the company who has stated that he know the workman and was appointed on 11th November, 1979, on a salary of Rs 425 per month. He was appointed on trial/temporary basis. He was not given any appointment letter. In the middle of March, 1980, the workman removed some implements and instrument of the company which was reported by the foreman. The witness further stated that he called the workman to verify this fact and the workman admitted this fact and promised to return

the same in the evening. Again on 2nd April, the workman did the same kind of theft and promised to return the same in the evening after that the workman did not come in the factory. The witness has given the new fact in his statement that respondent paid Rs 500 to the workman against the claim of Rs 600 which the workman accepted before the Conciliation Officer. The witness has admitted in his cross-examination that the matter was not reported to the police. It has never come during statement of the witness whether those articles were received back from the workman or not. He has admitted in his cross-examination that we have terminated the services of the workman without any notice or enquiry. The witness has stated in his statement that they have paid Rs. 500 to the workman. They have not mentioned this fact in their written statement at the first opportunity. Moreover they have not produced any such document which can show that the respondent have paid such money. The witness has stated that this fact of payment was accepted before the conciliation officer who has come as witness as MW-2. But this fact was not put to him by the respondent and he did not say any thing about this fact of payment. The other witness of the respondent Shri O. D. Sharma, Conciliation Officer deposed that this case came to him for re-conciliation and before him the workman told that the material of the management-respondent was sold to him by a another workman. In his cross-examination he has admitted the suggestion that the workman did not told him that he had stolen them.

The workman in his statement as WW-1 stated that on a false pretext of theft the respondent terminated the services of the workman on 2nd April, 1980, without giving any charge sheet or warning or an enquiry. He was not given any termination order. The case of theft was all concocted story merely to hunt out. There was not police report even after two incidents of theft. He further stated that he had not purchased any such tools from any body which belongs to the respondent. In his cross-examination the workman denied the receipt of any money from the respondent. He further stated that has said nothing before the conciliation officer about the purchase of any such tool. As discussed above the respondent has failed to justify the terminated of the workman. They have produced no documentary evidence to prove their case. They services of the workman was removed on 2nd April, 1980, and the workman served the demand notice on 3rd April, 1980, on the next date of his termination. If there was such case of theft with the workman and as stated by the respondent in their written statement that the workman did not come in the factory due to shame of the theft then the thief did not demanded the service of the same respondent on the next day as in this case. The story of payment of Rs 500 has come first time in the statement of MW-1. If they had paid such amount to the workman then they should have mentioned it in the written statement of MW-1 at the first opportunity and not later on. The respondent have not asked this question to the MW-2 to corroboration this fact, which was not done by the respondent. I do not believe the statement of the MW-1 partner of the company as true and because it is not supported by any documentary evidence. The respondent has failed to prove whether this workman was temporary or permanent. They have withhold proper evidence in the above case as it might be against them. As discussed above I hold that the termination of the workman is not proper and ustified and it is not in order. So the finding of issue No. 1 goes in favour of the workman against the respondent.

The workman is entitled of his reinstatement with full back wages. No order as to cost. This may be read an answer of this reference.

HARI SINGH KAUSHIK, •

Presiding Officer,

Labour Court, Haryana, Faridabad.

The 10th August, 1981.

Endorsement No. 2558, dated 17th August, 1981.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947, with the request that the receipt of the above said award may please be acknowledged within week's time.

HARI SINGH KAUSHIK,

Presiding Officer,

Labour Court, Haryana, Faridabad.